



January 7, 2002

Mr. Stephen R. Zastrow  
Police Legal Advisor  
Corpus Christi Police Department  
321 John Sartain  
Corpus Christi, Texas 78401

OR2002-0099

Dear Mr. Zastrow:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 156994.

The City of Corpus Christi (the "city") received a request for a list of gang members. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We begin by addressing the requestor's contention that he previously requested the same information in a June 26, 2001 letter, but received no response from the city. Generally, in order to withhold information from disclosure, a governmental body must ask this office for a decision within ten days of receiving the request for information. If the city had received a request from the requestor on June 26, 2001, the city would be well past the time for requesting a decision from this office to withhold the information. However, the city states that it has no record of receiving the June 26, 2001 request. We cannot resolve disputes of fact in the open records process, and therefore, we must rely on the representations of the governmental body requesting our opinion. Open Records Decision Nos. 554 (1990), 552 (1990). Consequently, based on the city's representation that it did not receive the June 26, 2001 request from the requestor, we find that the city has not missed its deadline for requesting a decision from this office.

You contend that the requested gang information is excepted from disclosure under section 552.101 of the Government Code in conjunction with articles 61.03 and 61.05 of the Code of Criminal Procedure. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by statute. Chapter 61 of the Code of Criminal Procedure deals with intelligence information pertaining to street gangs. Article 61.03 provides in relevant part:

(a) A criminal justice agency that maintains criminal information under this chapter may release the information on request to:

- (1) another criminal justice agency;
- (2) a court; or
- (3) a defendant in a criminal proceeding who is entitled to the discovery of the information under Chapter 39.

Crim. Proc. Code art. 61.03(a) (emphasis added). Further, article 61.05 of the Code of Criminal Procedure provides that release of the information to a person who is not entitled to the information is a Class A misdemeanor. Therefore, we conclude that submitted information must be withheld under section 552.101 of the Government Code in conjunction with article 61.03 of the Code of Criminal Procedure.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

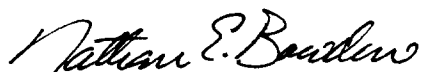
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden  
Assistant Attorney General  
Open Records Division

NEB/sdk

Ref: ID# 156994

Enc: Submitted documents

c: Mr. Michael C F White  
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Marina Del Rey, California 90291  
(w/o enclosures)